

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

THE ESTATE OF LAURA RATLEY, by)
and through its duly appointed special)
administrator Robert Ratley; ROBERT)
RATLEY and AMY RATLEY as heirs at)
law of Laura Ratley, deceased, LEAH)
RATLEY; THE ESTATE OF REBECCA)
FULCHER, by and through its duly)
appointed special administrators John)
Fulcher and Amy Fulcher; JOHN)
FULCHER and AMY FULCHER as heirs at)
law of Rebecca Fulcher, deceased; and)
RYAN FULCHER,)

Plaintiffs,)

v.)

DHAFFER M. AWAD and SHAMROCK)
FARMS COMPANY, an Arizona Limited)
Liability Company.)

Defendants.)

Case No. CIV-19-159-D

*(Removed from District Court of
Payne County Case No. CJ-19-2)*

NOTICE OF REMOVAL

Defendant, Shamrock Farms Company (“Shamrock”), hereby removes this action from the District Court of Payne County, Oklahoma, to the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C. §§ 1332(a)(1), 1367, 1441, and 1446. In support thereof, Shamrock states as follows:

PROCEDURAL INTRODUCTION

1. On January 2, 2019, Plaintiffs, the Estate of Laura Ratley, by and through its duly appointed special administrator Robert Ratley; Robert Ratley and Amy Ratley as heirs at law of Laura Ratley, deceased; Leah Ratley; the Estate of Rebecca Fulcher, by and through its duly appointed special administrators John Fulcher and Amy Fulcher; John Fulcher and Amy Fulcher as heirs at law of Rebecca Fulcher, deceased; and Ryan Fulcher (“Plaintiffs”) filed a Petition in

the District Court of Payne County, Oklahoma, entitled *The Estate of Laura Ratley et al. v. Dhafer M. Awad et al.*, Case No. CJ-19-2 (the “State Court Action”).

2. Plaintiffs did not serve Shamrock with a copy of the Petition or Summons. Plaintiffs did not file a proof of service in the State Court Action.

3. Plaintiffs did not serve Defendant, Dhafer M. Awad, with a copy of the Petition or Summons. Plaintiffs did not file a proof of service in the State Court Action.

4. On February 5, 2019, Plaintiffs filed an Amended Petition in the State Court Action.

5. Plaintiffs served Shamrock with a copy of the Amended Petition and Summons on February 8, 2019.

6. Plaintiffs have not filed a proof of service to establish that they have served Defendant, Dhafer M. Awad, with a copy of the Amended Petition and Summons.¹

7. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) having been filed within 30 days after Defendant, Shamrock Farms Company, was served with a copy of the Amended Petition and Summons, its first notice of this action.

8. Pursuant to 28 U.S.C. § 1441(a), venue is proper in the United States District Court for the Western District of Oklahoma because this judicial district includes Payne County, Oklahoma, where the State Court Action was filed.

GROUND FOR REMOVAL

9. This Court has original jurisdiction over all claims asserted by Plaintiffs, except for the claim asserted by Ryan Fulcher, under 28 U.S.C. § 1332(a)(1). With respect to the claims of

¹ Therefore, removal is proper even without Mr. Awad’s consent. *See* 28 U.S.C. § 1446(b)(2)(A) (“[A]ll defendants who have been properly joined and served must join in or consent to the removal of the action.”).

all Plaintiffs, except Ryan Fulcher, there is complete diversity of citizenship and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

10. This Court has supplemental jurisdiction over the claim asserted by Ryan Fulcher under 28 U.S.C. § 1367. With respect to the claim of Ryan Fulcher, there is complete diversity of citizenship, it relates to the same case or controversy as the claims over which this Court has original jurisdiction, but it is unclear whether the amount in controversy in his claims exceeds the sum of \$75,000.00.²

Citizenship of the Parties

11. Laura Ratley, deceased, was at the time of her death a resident of the State of Kansas, who, upon information and belief, intended to remain in the State of Kansas. *See* Victims' families remember the two Kansas women killed in Oklahoma crash, <https://www.kwch.com/content/news/Two-Kansans-killed-in-Oklahoma-418405053.html> (last visited February 19, 2019). *See also* Obituaries, Laura Beth Ratley, <http://www.hutchnews.com/17e793e7-105e-5879-a5a5-d890413ae026.html> (last visited February 19, 2019). Therefore, Plaintiff, the Estate of Laura Ratley,³ by and through its duly appointed special administrator Robert Ratley, is a citizen of the State of Kansas. *See* Amended Petition, ¶ 1.

12. Plaintiff, Robert Ratley, as heir at law of Laura Ratley, deceased, is an individual who is currently a resident of the State of Kansas, who, upon information and belief, intends to remain in the State of Kansas. *See* Amended Petition, ¶ 2. Therefore, Plaintiff, Robert Ratley, as heir at law of Laura Ratley, deceased, is a citizen of the State of Kansas.

² As to Plaintiff Ryan Fulcher, Shamrock will file a counterclaim for contribution and indemnity for the claims of the other Plaintiffs such that the amount in controversy between Shamrock and Plaintiff Ryan Fulcher will exceed \$75,000.00, exclusive of interest and cost.

³ The legal representative of the estate of a decedent is deemed to be a citizen of the same State as the decedent. *See* 28 U.S.C. § 1332(c)(2).

13. Plaintiff, Amy Ratley, as heir at law of Laura Ratley, deceased, is an individual who is currently a resident of the State of Kansas, who, upon information and belief, intends to remain in the State of Kansas. *See* Amended Petition, ¶ 3. Therefore, Plaintiff, Amy Ratley, as heir at law of Laura Ratley, deceased, is a citizen of the State of Kansas.

14. Plaintiff, Leah Ratley, is an individual who is currently a resident of the State of Kansas, who, upon information and belief, intends to remain in the State of Kansas. *See* Amended Petition, ¶ 4. Therefore, Plaintiff, Leah Ratley is a citizen of the State of Kansas.

15. Rebecca Fulcher, deceased, was at the time of her death a resident of the State of Kansas, who, upon information and belief, intended to remain in the State of Kansas. *See* Victims' families remember the two Kansas women killed in Oklahoma crash, <https://www.kwch.com/content/news/Two-Kansans-killed-in-Oklahoma-418405053.html> (last visited February 19, 2019). *See also* [https://www.legacy.com/obituaries/name/rebecca-fulcher-
obituary?pid=184995177](https://www.legacy.com/obituaries/name/rebecca-fulcher-obituary?pid=184995177) (last visited February 19, 2019). Therefore, Plaintiff, the Estate of Rebecca Fulcher,⁴ by and through its duly appointed special administrator John Fulcher and Amy Fulcher, is a citizen of the State of Kansas. *See* Amended Petition, ¶ 5.

16. Plaintiff, John Fulcher, as heir at law of Rebecca Fulcher, deceased, is an individual who is currently a resident of the State of Kansas, who, upon information and belief, intends to remain in the State of Kansas. *See* Amended Petition, ¶ 6. Therefore, Plaintiff, John Fulcher, as heir at law of Rebecca Fulcher, deceased, is a citizen of the State of Kansas.

17. Plaintiff, Amy Fulcher, as heir at law of Rebecca Fulcher, deceased, is an individual who is currently a resident of the State of Kansas, who, upon information and belief, intends to

⁴ The legal representative of the estate of a decedent is deemed to be a citizen of the same State as the decedent. *See* 28 U.S.C. § 1332(c)(2).

remain in the State of Kansas. *See* Amended Petition, ¶ 7. Therefore, Plaintiff, Amy Fulcher, as heir at law of Rebecca Fulcher, deceased, is a citizen of the State of Kansas.

18. Plaintiff, Ryan Fulcher, is an individual who is currently a resident of the State of Kansas, who, upon information and belief, intends to remain in the State of Kansas. *See* Amended Petition, ¶ 8. Therefore, Plaintiff, Ryan Fulcher is a citizen of the State of Kansas.

19. Defendant, Dhafer M. Awad, is an individual who, upon information and belief, is currently a resident of the State of Arizona and who intends to remain in the State of Arizona. *See* Amended Petition, ¶ 9. Therefore, Defendant, Dhafer M. Awad, is a citizen of the State of Arizona.

20. Shamrock is a corporation organized under the laws of the state of Arizona with its principal place of business in Phoenix, Arizona.⁵ *See* Declaration of Karen J. Williams, attached as Exhibit “1.” *See also* Arizona Corporation Commission, Entity Information: Shamrock Farms Company, attached as Exhibit “2.” Therefore, Shamrock is a citizen of the State of Arizona.

Amount in Controversy

21. Based on the factual allegations pled in the Amended Petition and their prayer for relief, all Plaintiffs, except for Ryan Fulcher, request damages in excess of \$75,000, exclusive of interest and cost. *See* Amended Petition, ¶¶ 40–44.

22. Based on the factual allegations pled in the Amended Petition, Ryan Fulcher’s claim derives from a common nucleus of operative fact as the claims asserted by the other Plaintiffs: the car wreck that occurred on or about April 5, 2017 in Noble County, Oklahoma that is the subject of the State Court Action. *See* Amended Petition, ¶ 45. Further, Shamrock intends to file a counterclaim against Ryan Fulcher for contribution and indemnity with respect to the claims

⁵ Plaintiffs mistakenly allege that Shamrock is a limited liability company. *See* Amended Petition, ¶ 11.

of the other Plaintiffs. As such the amount in controversy between Ryan Fulcher and Shamrock exceeds \$75,000.00, exclusive of interest and cost.

23. In alleging the amount-in-controversy for purposes of removal, Shamrock does not concede in any way that the allegations in the Amended Petition are accurate, that Plaintiffs are entitled to any relief requested in the Amended Petition, or that Plaintiffs have asserted claims upon which relief can be granted.

COMPLIANCE WITH 28 U.S.C. § 1446 & LCvR 81.2

24. Pursuant to 28 U.S.C. § 1446(a), all process, pleadings, and orders served upon Shamrock in the State Court Action are attached as Exhibit “3” and Exhibit “4.”

25. Pursuant to Local Civil Rule 81.2(a), a true copy of the state court docket sheet is attached as Exhibit “5.”

26. Pursuant to 28 U.S.C. § 1446(d), Shamrock will promptly give written notice of the filing of this Notice of Removal to all adverse parties and will file a copy of the Notice of Removal with the clerk of the Oklahoma District Court in and for Payne County

WHEREFORE, Defendant, Shamrock Farms Company by and through its undersigned counsel, hereby removes the above-styled case now pending in the District Court of Payne County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma.

Respectfully Submitted,

JONES, GOTCHER & BOGAN, P.C.

s/ Patrick G. Colvin

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*Attorneys for Defendant, Shamrock Farms
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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2019, I filed the attached document with the Clerk of Court. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to those registered participants of the Electronic Case Filing System.

I hereby certify that on February 19, 2019, I filed the attached document with the Clerk of Court and served the attached document by the United States Mail with proper postage fully prepaid thereon upon the following, who are not registered participants of the Electronic Case Filing System:

James V. Murray, OBA No. 11448

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Attorney for Plaintiffs

s/ Patrick G. Colvin

Patrick G. Colvin